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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LAOSD ASBESTOS CASES	B291411
ROBERT T. FRIEDMAN et al., Plaintiffs and Appellants, v. AMERICAN BILTRITE, INC. Defendant and Respondent.	(Los Angeles County Super. Ct. Nos. BC674502/JCCP4674)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank J. Johnson, Judge. Reversed and remanded with directions.

Weitz & Luxenberg, Benno Ashrafi and Josiah Parker for Plaintiffs and Appellants.

Manning Gross + Massenburg, Carrie Lin, Brent Karren and Candice Kusmer for Defendant and Respondent.

Crowell & Moring, Kevin C. Mayer and William L. Anderson for Coalition for Litigation Justice, Inc. as Amici Curiae on behalf of Defendant and Respondent.

INTRODUCTION

Plaintiffs Robert and Carole Friedman sued American Biltrite, Inc. (ABI), alleging that Robert's[1] mesothelioma was caused by exposure to asbestos from vinyl tile installed in their family home in 1966. At trial, plaintiffs presented expert testimony about a study that asbestos vinyl tiles release asbestos when cut, that asbestos inhalation causes mesothelioma, and that even a single exposure to asbestos can increase a person's risk of developing mesothelioma. The trial court barred plaintiffs' experts from directly stating that asbestos released during the tile installation in 1966 increased Robert's risk of developing mesothelioma. At the close of plaintiffs' evidence ABI moved for a directed verdict, and the trial court granted the motion.

On appeal, plaintiffs assert that the evidence presented was sufficient to support a verdict in their favor, and therefore a directed verdict was not warranted. We agree. ABI asserted that the tile study could not support the experts' opinions because it used a method to cut the tile—scoring and snapping the tile—that differed from what Robert said he observed—cutting the tile with a power saw. However, a minor difference between a study methodology and the facts of the case goes to the weight of the evidence, not admissibility. In addition, plaintiffs presented

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[1]Because plaintiffs share a last name, we refer to them individually by their first names for clarity and intend no disrespect.

sufficient exposure and causation evidence to support a verdict in their favor. We therefore reverse.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2017, plaintiffs filed a complaint for negligence, breach of warranty, strict liability, premises owner/contractor liability, and loss of consortium. They named eight defendants, and alleged that Robert was exposed to asbestos from the defendants' products "during home remodel work from 1966 to 1978." Plaintiffs alleged that Robert was exposed to asbestos from flooring from two defendants, including ABI; "construction products" from two defendants; joint compound from two defendants; and "asbestos fiber" from two defendants.

Trial proceeded against only ABI in May 2018. (The record on appeal does not reveal the disposition of plaintiffs' case against the other defendants.) The following evidence was presented at trial.

A. *Robert Friedman*

Robert testified that he and Carole were married in 1955, and they bought a house in Tarzana in 1966. Shortly after moving in, they had a family room area tiled in Amtico tile, which was gray and looked like a brick pattern. Robert testified that the room was about 35 by 25 feet. Professional installers came to install the tile over "a few days," and Robert testified that he took time off from work to be at the house while the tile was being installed. Robert testified that as the installers worked, he "was right there with them" because he was interested in learning how to install tile. Robert testified that the installers cut the tile using a circular saw; they would mark the tile where it needed to be cut, "and then just run it through the saw." The cutting process was "messy" and "dusty." Robert testified that he was

within "a few feet" of the tile cutting. Robert said the dust from the cutting "was all over," and "I'm sure I breathed a lot of it."

New ceramic, "mahogany, heavy fit, three-eighths of an inch tile" was laid over the Amtico tile sometime between 1980 and 2000. When Robert was deposed, he mistakenly thought that the mahogany tile was the Amtico tile installed in 1966. As discovery in the case progressed, however, Robert realized that the Amtico tile looked different, and had been covered by the newer tile. Robert was deposed again after this realization to clarify the misunderstanding, and Robert testified at trial about the conflicting deposition testimony. On cross-examination, defense counsel asked Robert if his recollection about observing the tile cutting and installation was for the Amtico tile or the mahogany tile. Robert responded that he was "describing the tile that was being put in the house at both installations."

Robert was diagnosed with mesothelioma in January 2017. He testified that the diagnosis and his related health problems impacted him by subjecting him to treatments, limiting his ability to engage in normal activity, and potentially shortening his life.

B. *David Rosner*

Plaintiffs' expert David Rosner, Ph.D., a historian of occupational and environmental health, testified extensively about historical knowledge regarding lung disease, exposure to industrial dust, asbestos, and mesothelioma. He testified that over time, industrial hygienists developed exposure limits for toxic materials, including asbestos. Rosner also testified about articles from the 1960s stating that people near those working with asbestos, not just the workers themselves, were at risk of exposure. Rosner testified that it was known by 1928 that

asbestos causes disease, by 1955 that it could cause cancer, by 1960 that it could cause mesothelioma specifically, and by the early 1960s that bystanders were at risk of health problems resulting from exposure. On cross-examination, defense counsel asked whether various publications addressed asbestos in floor tile, and Rosner responded that the publications focused on exposure to asbestos, not necessarily specific products. Rosner also said he had not read any studies involving the tile at issue in this case.

Rosner testified on redirect that asbestos becomes dangerous when disturbed or released, stating that vinyl asbestos tile is not necessarily dangerous, "unless you saw it, cut it, abrade it, [or] do something that allows fibers to be released. At that point, it's dangerous." Rosner also made clear that he was not testifying about the "actual amount of exposures that would come from any particular job."[2]

C. *Steven Paskal*

Plaintiffs' industrial hygienist expert Steven Paskal testified that asbestos is "a rock" that "crystallizes into a long

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[2]Because the issue on appeal is a motion for directed verdict, we consider only the evidence presented by plaintiffs. However, we note that ABI called its expert witness Frank Prudenti out of order to testify about vinyl tile installation. He testified that vinyl tile is cut one of three ways: the "score-and-snap" method, in which the tile is scored with a utility knife and then snapped; with a "pin vise," an alternate way of scoring tile before snapping it; or with a "tile chopper," which "looks like a paper cutter." When asked if vinyl tile could be cut with a power saw, Prudenti replied, "absolutely not." Prudenti did a demonstration for the jury, laying tile onto a board as if it were the floor of a room, including scoring and snapping tiles to fit them around the edges.

sliver like a needle" in pieces that are "so infinitesimal in size" they cannot be seen. Once broken into these tiny pieces, asbestos "behaves like cigarette smoke would in that it floats in the air . . . from China to here and goes around the world." Paskal said that asbestos can be friable, or able to be "pulverized with hand pressure." He also testified that asbestos can be non-friable as a solid chunk, or encapsulated by being covered or mixed with other materials.

Paskal testified that the fibers in a certain volume of air can be measured. "Background" air "has nothing to begin with," but also includes pollution from various sources. Thus, in air in a polluted area such as Los Angeles, "you could have 50 to 500. Pollution." (Paskal did not explain what these numbers described; the transcript suggests that he may have been referring to charts or other demonstrative exhibits that do not appear to be in the appellate record.) He said that the "scale is kind of like a Richter scale," and it was clear that the higher numbers were associated with more polluted areas. He testified that with respect to asbestos, "[t]hat is where these numbers come in," the "fibers per c.c."[3]

Paskal testified about the risks of exposure to asbestos from floor tile. Removing tile, which is "more aggravated work" with "scraping and things like that," caused levels "from .1 to 1 fibers per c.c., or 100,000 to a million fibers per cubic meter." Installing tile "would be another tier down. The .01, and it's

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[3] Plaintiffs' expert James Dahlgren, M.D., later explained that asbestos is measured by fibers per cubic centimeter, and "[t]here are a million cubic centimeters in a cubic meter." Thus, "a tenth of a fiber per c.c. is actually 100,000 fibers per cubic meter." He also testified that most people "take in anywhere from 10 to 15 cubic meters of air in a day."

below the measurability, much of it." Certain experiments demonstrated that there are a "number of different tasks that might have short-term spikes higher, like the snapping causes short-term spikes higher. The cleanup of the debris afterwards, there is loose dust in the box, all those things together – walking over it might cause a short-term spike higher, but the averages are in the .0 something to .1 range for that."

Plaintiffs' counsel asked Paskal, "[W]hat are you relying upon in regard to how we are getting to that 10,000 to 100,000 fibers per cubic meter for the installation?" Paskal responded, "These are just sampling data," from a trade association, and Paskal's company, Materials Analytical Services (MAS), "did some forensic studies for lawyers for litigations that brought these things in the chamber and measured the exposure." A June 2002 "work practice study" by MAS involved scoring and snapping of asbestos-containing floor tile (the score-and-snap study). The study stated that it utilized an enclosed lab area that was 20 x15 x 8 feet, and that "four area air samples were located in the quadrant ends" of the lab, "approximately five feet from the floor and six to eight feet from the work activity." A person performing the work activity was also fitted with air samplers. The "worker" scored asbestos-containing tiles with a utility knife, snapped the tiles along the scored line, and the "broken edge of the tile was then lightly sanded to insure a smooth fit." The study concluded that "the individual performing the scoring and snapping was exposed to an average level of asbestos fibers of 0.27 fibers/cc," and the "area samples demonstrated levels between <0.09 f/cc and .017 f/cc."

Paskal testified that the score-and-snap study had "two sets of numbers. The person doing the work breathing in the

range of 100,000 to one million; and two, another set of measurements around the area inside the [testing] chamber, inside – it's a common air space one tier down for the [*sic*] what you are calling the 'bystander' exposure." Paskal said the study is "one of the data points" he relied upon in reaching his conclusions.

Paskal discussed another work practice study by MAS in May 2004, involving the "repacking of asbestos containing floor tile." He stated that "[t]he numbers for the operator in the upper tier – actually, the numbers for the areas were at the upper end of the lower tier – a little above, but it gives both sets of numbers." Paskal stated that the study was relevant because tile installation also involved unpacking tile and cleaning up. He noted that the test chamber was "a smaller space than an entire house," and that "it's a variable, so you are never going to have an exact number that will be exactly the same in another situation."

Plaintiffs' counsel asked Paskal whether a higher level of exposure would result from use of a power tool such as a saw. Paskal said that use of power tools with asbestos-containing materials in general "uniformly causes greater releases into the air which in turn then become exposures." But he also said he could not "put numbers to it precisely" because it had not been measured. Plaintiffs' counsel asked, "Based on the description provided by Mr. Friedman in regard to the level of dust that he saw coming from the work with the power saws cutting into the asbestos tile, are you able to give any range of what that exposure level would be?" Paskal answered, "I mean in the stream right off the tip of the saw, it's probably above the 10

million, but what it corresponds to in his breathing is probably much lower."

ABI did not cross-examine Paskal, but moved to strike his testimony on the basis that he never established an adequate foundation for his opinions. The court stated that the score-and-snap study provided a foundation regarding fiber release "as far as the operator goes," and the repacking study "in some sense provides some additional support." The court also said that it would "allow his testimony as far as Mr. Friedman's theoretical exposure. I am not overwhelmed by the quantum of proof on that point. I believe they have barely laid the foundation for that testimony. So I will allow it." However, regarding "anything having to do with the ejection of asbestos by the saw method," there was "literally no evidence for which any expert could give an opinion as to that." The court said there was nothing to strike on this basis, because "I am not sure I can strike something he didn't say."

D. *James Dahlgren*

Plaintiffs' expert James Dahlgren, M.D., testified that he works in the field of toxicology and environmental and occupational health. He testified that "[a]sbestos is hazardous even if you can't see it in the air," and "[i]t takes a very small amount to cause an adverse effect." He explained how asbestos fibers affect the pleura—the membranes surrounding the lungs—and cause cancer. Dahlgren also testified that there was an identifiable exposure to asbestos in about 90 percent of mesothelioma cases in men, and it can take up to 60 years for mesothelioma to manifest. Dahlgren testified that due to individual variation, some people exposed to asbestos will not develop cancer.

Dahlgren testified that "one day of exposure" has been reported as causing mesothelioma, and "it's very clear that very low doses can cause this disease, so-called minimal exposure." In adults exposed to small amounts of asbestos, there is typically a long latency period.

Regarding Robert, Dahlgren testified, "In this case he had some exposure. It was a fairly small amount of exposure, but definite exposure to asbestos. And it wasn't just a few days that they spent installing the vinyl asbestos, but it was the residual being in his home after."[4] Dahlgren continued, "Even if you find a small amount of asbestos exposure, the data would support the notion that it takes a very small dose to cause the disease."

When asked about the data that supported his opinion, Dahlgren pointed to a study by Iwatsubo in 1998 in which "the lowest dose they had had a four-fold increase in the development of mesothelioma" in a population exposed to ".55 fiber years."[5] Thus, Dahlgren concluded that "low-level exposure is associated with the occurrence of disease." Plaintiffs' counsel asked how fiber years translated to a single dose, and Dahlgren responded, "Well it doesn't." Dahlgren also pointed to a German study by Rodelsperger that "found the same thing, only it was a tenth of a fiber year." He also testified, "Markowitz the same. Lacourt the same" regarding "minimal exposures." Dahlgren noted a study by Hansen involving people living near an asbestos mine, who

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[4]The court overruled ABI's speculation objection to this statement.

[5]Dahlgren testified that "a fiber year is an exposure of fiber for one year, you know, one fiber per c.c. That is the way asbestos is measured."

experienced "half a fiber per c.c. for two months" and "had a very high rate of mesothelioma years later. [¶] So minimal exposure."

Plaintiffs' counsel asked Dahlgren whether there was a "safe dose" of asbestos. Dahlgren responded that "the only. . . dose that we think is safe is the background level. That is in our environment due to the fact that asbestos has been widely used throughout the world." He testified that "threshold" is a "level below which no risk would be expected. And the only threshold we have right now is background. And above background, how much above background it takes to cause the disease, . . . there is no data to identify that." Dahlgren discussed various authorities stating that there was no safe minimum dose and "no threshold has been identified below which there is no risk." ABI did not object to this testimony.

After a break in the testimony, ABI objected to Dahlgren giving any "specific causation testimony" regarding Robert on the basis that such testimony would have "an improper and insufficient foundation." ABI's counsel argued that an expert opinion on specific causation must rely on "scientific studies that support a similar exposure history" to the one at issue in the case, "to equate that the dose was sufficient for that exposure to be determined to be causative" as a substantial factor. The court noted that Dahlgren had stated "quite clearly and repeatedly" that any amount above background was "unacceptable. It increases the risk." The court allowed Dahlgren's testimony to proceed.

Dahlgren testified that one exposure to asbestos could be sufficient to cause mesothelioma. Dahlgren also stated that the "studies that have been done in the occupational fiber year realm

have not found a level below which there is no increased risk of mesothelioma."

Dahlgren talked about the score-and-snap study, and stated that the non-worker, bystander "area samples showed . . . 40,000 fibers per cubic meter." When plaintiffs' counsel asked if this was a "level that would put someone at risk of developing mesothelioma," Dahlgren answered, "Yes." Dahlgren stated that this level would increase the risk of mesothelioma, because "[w]e are talking about background levels of 30 fibers per cubic meter. This is 40,000 fibers per cubic meter."

Dahlgren testified that based on Robert's testimony, Robert was "in close proximity to where they were installing [the tile], a few feet away. And, therefore, he would be exposed as a bystander under those circumstances." Dahlgren said that Robert testified that the installation took three days, but in addition, "this stuff is going to hang in the air. It's going to contamin[ate] his home."

Following another question and objection from ABI's counsel, a discussion was held outside the jury's presence. Defense counsel argued that plaintiffs still failed to lay a foundation for Dahlgren's causation opinion. The court questioned whether the score-and-snap study was applicable, given Robert's testimony that the installers used a saw. Plaintiffs' counsel argued that the method of cutting did not matter, because "it doesn't change the fact that over the course of the three days, Mr. Friedman was there and they were installing the tile, he was exposed in some regard." Counsel and the court discussed background levels, additional exposures, and what is required to establish causation. ABI's counsel asserted that Dahlgren did not demonstrate that "low level exposures similar

to Mr. Friedman's were sufficient to support some opinion that it's enough above background to cause" mesothelioma. The court told plaintiffs' counsel, "I will allow you to continue to lay the foundation. At this point I don't believe you have done so and so you are on notice."

Dahlgren then testified again that "the data indicates clearly that any exposure to asbestos dust above background can cause mesothelioma." Plaintiffs' counsel asked if the fiber-year data suggested that increased exposure must last the entirety of a fiber year, and Dahlgren responded, "Of course not," and stated that one study found that "even a tenth of a fiber year was associated with increased mesothelioma risk." Plaintiffs' counsel asked whether heightened exposure on a single day or a few days was sufficient to cause mesothelioma. Counsel for ABI objected on foundation grounds because there was "no correlation between a study that relates to floor tile exposures that Mr. Friedman had or alleges to have and an excess risk of mesothelioma." The court sustained the objection. On further questioning, Dahlgren confirmed that the score-and-snap study demonstrated an exposure level of .04 fibers per cubic centemeter or 40,000 fibers per cubic meter, and reiterated that studies show that "there is no level" of exposure "that has been established that is safe, including 40,000 fibers per cubic meter for one day."

When plaintiffs' counsel asked Dahlgren whether he could opine, based on the score-and-snap study and Robert's testimony, that the exposure at issue increased Robert's risk of developing mesothelioma, defense counsel objected again, and the court and parties had another sidebar discussion. Plaintiffs' counsel argued that the information in the score-and-snap study, along with Robert's testimony, "is sufficient for an expert to put those things

together for the benefit of the jury to show, yes, he would have been exposed to this level and thus is at risk." The court responded, "So what we have for your expert, the basis for his opinion is Mr. Friedman's testimony that on a particular fateful day in 1966, he was in a room that arguably might have had elevated levels, period. That's it. That's the sum total of all the science that your expert Dr. Dahlgren can bring to bear . . . in this individual case. Really, can it get any thinner than that? I don't think so." The court said it would review the study further over the upcoming lunch break.

After the break, the court stated that it did not think that "the plaintiffs have established a foundation for the doctor to testify about any sort of causation between the tile incident that has been referenced in the testimony and the ailment that [Robert] has." The court said Robert testified that the tile was cut with a saw, and "[t]here is zero evidence before the court about the effect of that or what kind of pollution that subjects anyone to." The court continued, "What we basically have is an installation that occurred, some sort of proximity to it over a one- to maybe three-day period and that's it. I don't see that there is any scientific basis for any conclusions that could be made to the trier of fact based on those simple facts. So I believe the defense objection is well taken." The court also noted that the score-and-snap study "references a sanding which occurred in connection with the installation." Plaintiffs' counsel argued that the evidence presented was sufficient to pose a hypothetical to Dahlgren about the cause of Robert's mesothelioma, and whether plaintiffs had met their burden of demonstrating causation was a jury question. ABI's counsel argued that there was still a

foundation problem, and the court in its gatekeeping capacity should exclude any causation opinion from trial.

The court sustained ABI's objection. It stated that it was "prevent[ing] the jury from hearing expert opinions that are not based on solid science. . . . [I]t looks to me like there is an attempt being made to cram a square peg into a round hole. This study does not get you where you need to go." Back on the stand, Dahlgren testified about the progression of mesothelioma and Robert's life expectancy.

On cross-examination, ABI's counsel asked Dahlgren about a deposition he had given in a previous case, in which Dahlgren testified that the duration of asbestos exposure was "obviously important. There's no way that the science, at least as I understand it, can say, okay, this person was exposed to .0005 fibers per c.c. for, you know, one week. Is that enough to do it? Well, we don't know yet." Dahlgren agreed that that had been his testimony, and ABI's counsel asked no further questions. On redirect, plaintiffs' counsel briefly asked Dahlgren about the previous testimony, and Dahlgren repeated that "[w]e don't know . . . the threshold below which there is no significant increased risk."

E. *Additional evidence*

Plaintiffs' counsel read to the jury interrogatory responses by ABI stating that ABI made Amtico "vinyl asbestos tile" that was "approximately 13 percent to 18 percent chrysotile" asbestos. The trial court read a stipulation about the amount of plaintiffs' economic damages.

A video of a deposition of the person most qualified for ABI, Roger Marcus, was played for the jury. He testified about Amtico tile that was available in 1966. He also testified that vinyl tile

was typically cut by the score-and-snap method, and cutting it with a saw was "impractical" because it would "leave rough edges." He testified that scoring and snapping tile resulted in an edge that was "more or less perfect," and no sanding was required. Marcus also testified that ABI did not perform any tests regarding asbestos release from scoring and snapping tile, or from sanding tile. Much of Marcus's testimony is not relevant to the issues on appeal and is therefore not described here. The deposition of another person most qualified, Merrill Smith, was also read to the jury. Smith discussed the manufacture of vinyl asbestos tile, and stated that chrysotile asbestos made up about 15 percent of the tile. He also discussed testing of tile, and testified that ABI did not test tile for asbestos release. He also testified that there were no warning labels on ABI products in the 1960s, and at that time ABI did not know that asbestos was dangerous.

Carole Friedman testified about her life with Robert and how he changed after his diagnosis.

F. *Motion for directed verdict*

When plaintiffs rested, ABI moved for a directed verdict[6] on the basis that plaintiffs failed to present evidence sufficient to

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[6]By statute, a motion for directed verdict may be made "after all parties have completed the presentation of all of their evidence," "[u]nless the court specified an earlier time for making a motion for directed verdict." (Code Civ. Proc., § 630, subd. (a).) Here, it does not appear that the court specified an earlier time for making such a motion, and therefore a motion for nonsuit, rather than a motion for directed verdict, would have been procedurally appropriate. (See Code Civ. Proc., § 581c, subd. (a) [after "the presentation of [the plaintiff's] evidence in a trial by jury, the defendant . . . may move for a judgment of nonsuit."].)

establish a prima facie case on the element of causation. ABI argued that plaintiffs' experts did not testify that to a reasonable degree of medical certainty, Robert's three-day exposure as a bystander to the tile installation was a substantial factor in increasing his risk of mesothelioma. ABI asserted that Paskal did not provide any expert opinion as to causation, and Dahlgren did not "rely on any literature which provided time-weighted averages for the kinds of exposure at issue," thus his causation opinions were barred for lack of foundation. ABI contended that "Plaintiffs have presented absolutely no evidence that Mr. Friedman's alleged exposures increased his risk of developing mesothelioma. As such, there is no evidence that Plaintiff's alleged exposure to Amtico floor tiles was a substantial causative factor in his development of mesothelioma."

Plaintiffs opposed ABI's motion, asserting that the evidence presented was sufficient. They pointed to Robert's testimony about the installation of the tile, including his proximity to the cutting and the dust that it created; Paskal's testimony about asbestos exposure above background levels from scoring and snapping the tile; and Dahlgren's testimony that any exposure above background resulted in an increased risk of mesothelioma. Plaintiffs asserted that they "have established (1) factual evidence of exposure, (2) expert testimony as to the cause of mesothelioma generally, and (3) expert medical testimony on the relationship between asbestos and cancer. In fact, although unnecessary, Plaintiffs have gone above and beyond this burden

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Neither plaintiffs nor the court challenged the motion as procedurally improper; thus it appears that the court exercised its discretion to consider the directed verdict motion early.

by establishing actual exposure numbers (f/cc) through" Paskal's testimony.

The court stated that it read the motion and opposition, and said, "Preliminarily, it occurs to the court that, really, this case must be at the very lowest level of causation that is likely to be heard by this or any other court." Because there was no evidence of any other asbestos exposure, "it has to stand or fall on that single exposure over up to a three day period in 1966. And that's fine. . . . [F]or the sake of this motion, we treat those allegations as being accepted." However, the court said it was concerned that plaintiffs' theory appeared to be based on "a simple tautology: asbestos is bad, exposure to asbestos is bad; therefore, any exposure to asbestos for whatever period of time increases the risk of mesothelioma and other related diseases." However, "there was zero evidence presented – scientific evidence to justify any such opinion. . . which is the reason the court excluded the vast majority of those types of opinions."

The court continued, "There [was] no literature or scientific study" presented that discussed the installation of asbestos-containing tile in the "somewhat unique" manner Robert testified about. The court expressed doubt as to whether the score-and-snap study could support plaintiffs' case when "there was no testimony about scoring and snapping and there was no testimony about sanding." The court stated, "What we essentially have here is a relatively fleeting exposure to asbestos and then this horrible disease being contracted some 52 years later or whatever it was, and no scientific evidence that would justify any opinion by any expert as to the link between those two events." The court noted that the studies the witnesses referenced involved "[f]actory workers and mechanics, and people

like that, people who work with asbestos," unlike Robert. The court said that experts "are entitled to their opinions, but they have to be based on science, not just . . . their own conclusions that asbestos is bad and causes mesothelioma, therefore, it must have been a substantial cause."

The parties argued their respective positions, including plaintiffs' counsel's assertion that a plaintiff must only show that exposure to the defendant's product increased the risk of disease. The court told plaintiffs that the position "you are urging this court to adopt would result in a person, speaking hypothetically, who walked by the Friedmans' house during this tile installation and later contracted mesothelioma" to establish causation based on that fleeting exposure. The court said, "I just don't believe that is the law. I believe under the unique facts of this case, . . . where it's a single exposure and an exposure of the type not referenced in any of the literature brought before this court or the trier of fact, . . . you have got a big hole in the middle of your case." The court stated that there was "no competent medical or scientific testimony about the linkage, the amount of exposure," which was not sufficient to meet plaintiffs' burden. The court therefore granted the motion.

Judgment was entered in ABI's favor, and plaintiffs timely appealed.

DISCUSSION

On appeal, plaintiffs assert that the trial court erred by granting ABI's motion for a directed verdict. "We review the trial court's entry of a directed verdict de novo. [Citation.] A directed verdict in favor of a defendant is proper if, after disregarding conflicting evidence and drawing every legitimate inference in favor of the plaintiff, there is '"no evidence of sufficient

substantiality to support a verdict in favor of'" the plaintiff. [Citation.] In ruling on the motion, the trial court may not weigh the evidence, consider conflicting evidence or judge the credibility of witnesses. [Citation.] The reviewing court must view the evidence in the light most favorable to the plaintiff, resolve all conflicts in the evidence and draw all inferences in the plaintiff's favor, and disregard conflicting evidence." (*Guillory v. Hill* (2015) 233 Cal.App.4th 240, 249.) "'[T]he power of the court to direct a verdict is absolutely the same as the power of the court to grant a nonsuit.'" (*Baker v. American Horticulture Supply, Inc*. (2010) 185 Cal.App.4th 1295, 1308.)

In determining whether plaintiffs set forth sufficient evidence in this asbestos product liability case, we consider (1) whether the plaintiff has established some exposure to the asbestos-containing product at issue; and (2) whether the plaintiff has established a reasonable medical probability that the exposure to the product was a "legal cause" of the plaintiff's injury, i.e., a substantial factor in bringing about the injury. (*Hernandez v. Amcord, Inc*. (2013) 215 Cal.App.4th 659, 673 (*Hernandez*).) Exposure and causation are two separate elements. (See, e.g., *Turley v. Familian Corp*. (2017) 18 Cal.App.5th 969, 979 ["[T]here are two elements to plaintiffs' claims: (1) 'some threshold exposure,' and (2) 'legal cause.'"].) To prevail, a plaintiff must present evidence of both.

The court appeared to express several concerns about plaintiffs' evidence, and was not always clear in distinguishing the exposure element from the causation element. On appeal, the parties also do not make this distinction clear, and tend to collapse the two elements. For example, plaintiffs assert that "neither calculation of precise exposures nor scientific studies

specific to the activity involved are required in order to establish legal cause in an asbestos cancer case." Similarly, ABI contends that there was insufficient evidence that Robert's "observation of others installing floor tile for a three day period in 1966 would have been a substantial factor in increasing his risk of mesothelioma."

Ultimately, however, the court expressed concern over both the exposure and causation elements: First, did the snap-and-score study support the experts' conclusion that Robert was exposed to asbestos? And second, assuming Robert was exposed to asbestos from the tile installation, was there sufficient evidence that this fleeting exposure was a substantial factor in causing Robert's mesothelioma? We address both issues, and find that the court erred in granting ABI's motion for a directed verdict. In addition, we find that the court erred in barring Dahlgren from opining on whether Robert's exposure to asbestos caused his mesothelioma.

A. *Exposure*

"A threshold issue in asbestos litigation is exposure to the defendant's product. The plaintiff bears the burden of proof on this issue." (*McGonnell v. Kaiser Gypsum Co., Inc.* (2002) 98 Cal.App.4th 1098, 1103.) If a plaintiff "cannot make the threshold showing of exposure to a harmful product, . . . we do not get to the next step of determining if the 'product' was a substantial factor." (*Miranda v. Bomel Construction Co., Inc.* (2010) 187 Cal.App.4th 1326, 1339.)

Plaintiffs acknowledge that in granting ABI's motion, the court had "two rationales"; the first was that there was "'no literature or scientific study that has been pointed out to the court referencing installation' of asbestos-containing floor tile in

the manner evidenced in this case. Pointing to the score-and-snap study, plaintiffs assert that "the evidence at trial actually provided a quantification of Robert's exposures."

Robert testified that the tile installation took "a few days," and as the workers were cutting the tile, "I was right there with them." Robert testified that they cut the tile using a circular saw, the cutting process was "messy" and "dusty", and he breathed "a lot" of the dust.

Paskal testified that the score-and-snap study had "two sets of numbers. The person doing the work" and "another set of measurements around the area inside the [testing] chamber." Dahlgren testified that in the score-and-snap study, the non-worker "area samples showed . . . 40,000 fibers per cubic meter." Dahlgren stated that this was above background levels: "We are talking about background levels of 30 fibers per cubic meter. This is 40,000 fibers per cubic meter." He also testified that "clearly background level would be far lower than this value, so this value is thousands of times higher than background." Dahlgren testified that based on Robert's testimony, he was "in close proximity to where they were installing [the tile], a few feet away. And, therefore, he would be exposed as a bystander under those circumstances."

ABI argues that this evidence was insufficient to support a jury finding in plaintiffs' favor. It asserts that "[t]here are no studies or data of any kind from which an expert could render an opinion" that Robert's presence during the tile installation "would have caused [Robert] to sustain a quantifiable asbestos exposure." ABI also contends that "there was no admissible evidence from which the jury could reasonably infer that bystander exposure to installation of floor tile for a three-day

period would result in 'above ambient' exposure." ABI asserts that Dahlgren did not define "background," and thus "it is . . . unclear how the jury could rationally conclude that Mr. Friedman's work [*sic*] around ABI floor tile resulted in an above background exposure." ABI also states that "the trial court properly found that Dahlgren lacked foundation, as there was no evidence presented in the record or through any study to provide support for the proposition that a bystander to the saw-cutting of vinyl asbestos floor tiles would have been exposed to asbestos above background levels."

However, Dahlgren clearly testified that an exposure such as the one measured in the score-and-snap study would expose a bystander to asbestos far above background levels, and ABI did not object. In addition, Paskal testified that the score-and-snap study and tile repacking study showed that asbestos was released by those activities, and that the score-and-snap study demonstrated the likelihood of bystander exposure. Therefore, admissible evidence did support this conclusion.

ABI contends that the score-and-snap study "did *not* involve the cutting of floor tile with a circular saw," as Robert described, and therefore it "did not address bystander exposure at all." ABI asserts that the trial court "correctly questioned the inconsistencies between the testimony in this case and Dr. Dahlgren's reliance materials." The court expressed some reservations about the applicability of the score-and-snap study to the facts of this case in light of Robert's testimony about the saw, and because the study stated that it included sanding of the tile edges, when there was no evidence that sanding was a common practice or occurred in this case. However, the court did not limit expert testimony on the exposure levels measured in the

study, or otherwise limit testimony about Robert's exposure to asbestos. Both Paskal and Dahlgren testified about possible exposure based on the score-and-snap study. The court's only limitations on expert testimony involved causation.

This case is somewhat unique in that it involves a challenge to the exposure element that does not question the identity of the product at issue. Nonetheless, Robert testified that the tile cutting created dust and he breathed the dust, and Paskal and Dahlgren testified that the dust contained asbestos; in fact, it appeared undisputed that the tile contained asbestos. Many cases have acknowledged that asbestos exposure may be established through a plaintiff's testimony about breathing dust from an asbestos-containing product. (See, e.g., *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1141 ["Asbestos can cause disease when an individual inhales or ingests microscopic asbestos fibers that have been released into the air."]; *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 976 (*Rutherford*) [causation in an asbestos case depends on "the plaintiff's exposure to defendant's asbestos-containing product," including "the aggregate dose of asbestos the plaintiff or decedent inhaled or ingested."]; *Izell v. Union Carbide Corp*. (2014) 231 Cal.App.4th 962, 970 [where the plaintiff testified that he breathed dust arising from various construction activities, and that Union Carbide's product was used, "the evidence was sufficient to permit a reasonable inference that Mr. Izell was exposed to Union Carbide asbestos."].)

Here, plaintiffs presented sufficient evidence to establish the element of exposure. To the extent ABI and its experts disagreed that Robert may have been exposed to asbestos dust from the tile installation, ABI was free to present evidence to the

contrary at trial. For purposes of a directed verdict motion, however, the evidence plaintiffs presented is treated as undisputed. As a directed verdict was not warranted on this basis, we turn to causation.

B. *Substantial factor causation*

The court's second rationale for granting the motion for directed verdict was lack of evidence of causation. The court stated, "What we essentially have here is a relatively fleeting exposure to asbestos and then this horrible disease being contracted some 52 years later or whatever it was, and no scientific evidence that would justify any opinion by any expert as to the link between those two events."

Plaintiffs assert that the court's "predicate for its ruling, . . . that low exposures should not be allowed to establish causation, is in direct conflict with applicable law." ABI, on the other hand, asserts that the trial court's ruling was correct because "Plaintiffs presented no evidence—expert or otherwise—from which a jury could reasonably infer that Mr. Friedman's presence for three days around others installing ABI floor tile was a 'substantial factor' [in causing] his injury."

In a mesothelioma case, we employ the "substantial factor" analysis, under which a plaintiff may prove causation "by demonstrating that the plaintiff's exposure to defendant's asbestos-containing product in reasonable medical probability was a substantial factor in contributing to the aggregate *dose* of asbestos the plaintiff or decedent inhaled or ingested, and hence to the *risk* of developing asbestos-related cancer." (*Rutherford, supra,* 16 Cal.4th at pp. 976-977 (fn. omitted); see also *Shiffer v. CBS Corp*. (2015) 240 Cal.App.4th 246, 252 ["Mere presence at a

site where asbestos was present is insufficient to establish legally significant asbestos exposure."].)

"Factors relevant to the substantial factor analysis may include 'the length, frequency, proximity and intensity of exposure, the peculiar properties of the individual product, any other potential causes to which the disease could be attributed (e.g., other asbestos products, cigarette smoking), and perhaps other factors affecting the assessment of comparative risk.'" (*Johnson v. ArvinMeritor, Inc.* (2017) 9 Cal.App.5th 234, 240.) Thus, a plaintiff may "prove exposure to the defendant's product was a substantial factor in causing the cancer by showing (in a reasonable medical probability) the exposure was a *substantial factor contributing to the decedent's risk of developing cancer*." (*Phillips v. Honeywell Internat. Inc.* (2017) 9 Cal.App.5th 1061, 1069 [emphasis in original].) "[T]he proper analysis is to ask whether the plaintiff has proven exposure to a defendant's product, of whatever duration, so that exposure is a possible factor in causing the disease and then to evaluate whether the exposure was a substantial factor." (*Lineaweaver v. Plant Insulation Co.* (1995) 31 Cal.App.4th 1409, 1416 (*Lineaweaver*).)

Plaintiffs point out that Dahlgren testified that "it's very clear that very low doses" of asbestos can cause mesothelioma, and that "the data would support the notion that it takes a very small dose to cause the disease." Indeed, Dahlgren testified that a single exposure to asbestos could be sufficient to cause mesothelioma. He also said that "the data indicates clearly that any exposure to asbestos dust above background can cause mesothelioma."

ABI did not object to much of this testimony.[7] Rather, ABI objected only when counsel specifically asked plaintiffs' experts whether *Robert's* exposure could have caused *his* mesothelioma. However, expert opinion on this ultimate question is not necessarily required to establish substantial factor causation. Our colleagues in Division 2 of this district discussed this issue in *Hernandez, supra,* 215 Cal.App.4th 659. At trial in that case, the plaintiff presented evidence including an epidemiologist's testimony that a worker doing decedent's job would likely be at increased risk of mesothelioma as a result of using the defendant's product, and a medical doctor's opinion that the decedent's mesothelioma was caused by exposure to asbestos. (*Id*. at pp. 666-667.) The trial court granted the defendant's motion for nonsuit, and "explained its belief that the relevant authorities required that 'a doctor of some kind, somebody with an M.D. after his name, has got to say with a reasonable degree of medical probability that [defendant's] product was a substantial factor in causing his injuries.'" (*Id*. at p. 668.)

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[7]Amicus curiae, The Coalition for Litigation Justice, argues that "[t]his appeal is . . . about whether trial judges will be allowed to place *any* reasonable limit on how far these every exposure experts can go." It also states, "No other California opinion . . . permits an expert to opine that a single, short-lived exposure is a cumulative cause of disease without identifying any other cumulative exposures in the plaintiff's history." We agree that the facts of this case are unique compared to other asbestos product liability cases. However, amicus's contentions do not address the manner in which the parties presented the issues below, where plaintiffs' experts testified that even a single dose of asbestos could cause mesothelioma, and defense counsel did not object or otherwise seek to challenge the foundation for that opinion.

The Court of Appeal stated, "We disagree with the trial court's view that *Rutherford* mandates that a medical doctor must expressly link together the evidence of substantial factor causation." (*Hernandez, supra*, 215 Cal.App.4th at p. 675.) The court continued, "In *Rutherford*, the causation evidence included factual evidence of the decedent's exposure to respondent's product, expert testimony from an epidemiologist who opined as to the cause of mesothelioma generally, and expert medical testimony on the relationship between asbestos exposure and lung cancer. Pursuant to *Rutherford*, such evidence is sufficient for a jury to determine the issue of causation." (*Id*. at pp. 675-676.) As a result, the court held that nonsuit was improper: "Viewing this evidence in appellant's favor—as we must—it was sufficient to support a jury's inference that exposure to respondent's product was a substantial factor contributing to the decedent's risk of developing mesothelioma." (*Id*. at p. 676.)

The evidence here was similar. Although ABI objected to allowing Paskal or Dahlgren to answer an ultimate causation question—whether Robert's exposure to asbestos from ABI tile caused his mesothelioma—the evidence presented without objection was sufficient to allow the jury to find the substantial factor element in plaintiffs' favor. Robert testified that the exposure spanned several days, Rosner testified that exposure to asbestos causes mesothelioma, and Dahlgren testified that Robert was exposed to asbestos far above background levels, and that even a single exposure above background could increase the risk of mesothelioma. This evidence was sufficient to support a finding that exposure to ABI's tiles was a substantial factor in increasing Robert's risk of developing mesothelioma.

ABI compares this case to *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270 (*Pfeifer*). In that case, defendant JCI "manufactured and sold packing used in valves and pumps, and distributed gaskets used in flanges and pipe systems. Some of these products contained asbestos." (*Id.* at p. 1280.) The plaintiff, Pfeifer, was exposed to these products while in the Navy. (*Ibid.*) At trial, Pfeifer's expert testified that Pfeifer's exposure to asbestos substantially contributed to his mesothelioma. (*Id.* at p. 1282.) JCI presented evidence that Pfeifer sometimes removed gaskets using a wire brush and compressed air, contrary to JCI and Navy recommendations, which increased Pfeifer's exposure to asbestos. (*Id.* at p. 1287.) JCI argued at trial that Pfeifer was contributorily negligent, but the jury found Pfeifer to be zero percent at fault. (*Ibid.*)

On appeal, JCI "argue[d] that this evidence compelled the jury to find that Pfeifer's share of fault for his injuries was greater than 0 percent," but this court rejected that argument. (*Ibid.*) We stated that substantial factor causation "may be based on expert testimony regarding the size of the 'dose' or the enhancement of risk attributable to exposure to asbestos from the defendant's products." (*Ibid.*) The evidence presented at trial did not "compel the inference that Pfeifer's use of power wire brushes and compressed air was a substantial factor in causing his cancer." (*Ibid.*) There was "no evidence regarding how often Pfeifer resorted to power wire brushes or compressed air, and no expert opined that Pfeifer's use of these tools was, by itself, a substantial factor in the causation of his cancer." (*Id.* at p. 1288.)

ABI asserts that *Pfeifer* stands for the proposition that "evidence of infrequent work with an asbestos-containing product, is not, by itself, sufficient to raise a reasonable inference

that the exposure was a substantial contributing factor to injury." Contrary to ABI's assertion, *Pfeifer* did not hold that "evidence of infrequent work with an asbestos-containing product is not, by itself, sufficient to raise a reasonable inference that the exposure was a substantial contributing factor to injury." It held simply that on the evidence presented there and considered by the jury, a finding of comparative fault was not compelled.

ABI also asserts that "although it was Dr. Dahlgren's opinion that any exposure to asbestos dust above background levels can cause mesothelioma, he did not reference any study providing time-weighted averages for Robert Friedman's limited three-day exposure, or literature in support, as foundation that Robert Friedman was exposed to above background levels." ABI does not explain why "time weighted averages" are important or why Dahlgren's opinion is lacking without them. Moreover, Dahlgren *did* testify that Robert was exposed to asbestos above background levels based on the score-and-snap study. ABI cites no authority holding that more was required.

Moreover, as we noted in *Davis v. Honeywell International Inc.* (2016) 245 Cal.App.4th 477 (*Davis*), "*Rutherford* does not require a 'dose level estimation.' Instead, it requires a determination, to a reasonable medical probability, that the plaintiff's (or decedent's) exposure to the defendant's asbestos-containing product was a substantial factor in contributing to the risk of developing mesothelioma. (*Rutherford, supra*, 16 Cal.4th at pp. 976-977.) The *Rutherford* court itself acknowledged that a plaintiff may satisfy this requirement through the presentation of expert witness testimony that 'each exposure, even a relatively small one, contributed to the occupational "dose" and hence to the risk of cancer.'" (*Id.* at pp. 492-493.) Similarly, in *Lineaweaver,*

supra, 31 Cal.App.4th at p. 1417, the First District stated that when there is evidence of exposure, "Defendants would not escape liability simply because the precise contribution of each exposure to the disease cannot be determined. . . ." Thus, a directed verdict was not appropriate on the basis that Dahlgren did not specify a particular dose estimation.

ABI asserts, "Where, as here, there is a single or fleeting occurrence of work with or around an asbestos containing product, the plaintiff must prove substantial factor causation through something more than expert testimony that 'every exposure above background' contributes to the plaintiff's total dose of asbestos, and increases the risk of disease." However, it does not cite any authority for this statement. In *Davis*, we held that "it is for the jury to resolve the conflict between the every exposure theory and any competing expert opinions." (*Davis, supra*, 245 Cal.App.4th at p. 480.) Thus, to the extent that ABI's argument relies on plaintiffs' use of the "every exposure" theory, case law does not support the position that a directed verdict was warranted here.

The evidence presented at trial was therefore sufficient to establish plaintiffs' prima facie case, and the court's order granting the motion for directed verdict was erroneous. We reverse the judgment and remand the case. Because the parties have challenged the admissibility of Dahlgren's causation testimony, and that issue is likely to recur on retrial, we address it below.[8]

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[8] Buried deep within plaintiffs' opening brief, in a section without a relevant heading or any citations to relevant authorities, plaintiffs assert in passing that the trial court erred by limiting Dahlgren's causation opinion. Appellate briefs are

C. *Limitation on Dahlgren's testimony*

ABI objected each time plaintiffs' counsel asked Dahlgren to express an opinion as to whether Robert's exposure to asbestos from ABI tiles caused his mesothelioma. The court sustained these objections, stating that plaintiffs had not "established a foundation for the doctor to testify about any sort of causation between the tile incident that has been referenced in the testimony and the ailment that [Robert] has." In plaintiffs' brief argument on appeal, they state that the court "refused to permit Dr. Dahlgren to actually state that Robert's exposures to ABI's asbestos was a substantial factor in causing his mesothelioma. [Record citation.] In light of the evidence and in light of the legal principles at issue, that ruling—which forms the basis for the directed verdict—was an abuse of discretion." They assert that "there was a sufficient evidentiary basis to support Dr.

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required to "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." (Cal. Rules of Court, 8.204(a)(1)(B).) Plaintiffs' brief—to the extent it intended to assert that the court abused its discretion in an evidentiary ruling, and that the error was prejudicial—does not comply with this rule. "[W]e may disregard assertions or contentions not raised in a properly headed argument." (*Dinslage v. City and County of San Francisco* (2016) 5 Cal.App.5th 368, 377, fn. 3.) Nonetheless, ABI recognized the argument and addressed it in its respondent's brief. Plaintiffs briefly addressed the argument in their reply. Therefore, we exercise our discretion to consider plaintiffs' assertion that the trial court's ruling limiting Dahlgren's testimony was erroneous. ABI discusses the court's limitation of Paskal's testimony as well, but because plaintiffs did not address this issue in their opening brief, we do not consider it.

Dahlgren's opinion that Robert's exposures to the ABI asbestos was sufficient to increase his risk of disease."

"[U]nder Evidence Code sections 801, subdivision (b), and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 771-772 (*Sargon*).) In fulfilling this role, the trial court must "determine whether the matter relied on can provide a reasonable basis for the opinion or whether that opinion is based on a leap of logic or conjecture. The court does not resolve scientific controversies. Rather, it conducts a 'circumscribed inquiry' to 'determine whether, as a matter of logic, the studies and other information cited by experts adequately support the conclusion that the expert's general theory or technique is valid.'" (*Id*. at p. 772.) We review a trial court's ruling excluding expert testimony for abuse of discretion. (*Id.* at p. 773.)

ABI asserts that the trial court correctly limited Dahlgren's testimony because this case involves a single, fleeting exposure to asbestos, and "[t]here are no studies or data of any kind from which an expert could render an opinion that this occurrence would have caused Plaintiff to sustain a quantifiable asbestos exposure." As we discussed above, asbestos exposure may be established without testimony from an expert to "quantify" it. Thus, this was not a valid basis upon which to exclude Dahlgren's opinion.

ABI also argues that the score-and-snap study does not adequately support Dahlgren's opinion. It contends that there was "no evidence presented in the record or through any study to

provide support for the proposition that a bystander to the saw-cutting of vinyl asbestos floor tiles would have been exposed to asbestos above background levels." ABI focuses heavily on Robert's testimony that the tile installers used a circular saw to cut the tile, and argues that the score-and-snap study "did *not* involve the cutting of floor tile with a circular saw, as described by Robert Friedman, but instead involved the 'scoring and snapping' method wholly irrelevant to this case."

Although the court sustained one or two objections on the basis that the score-and-snap study was dissimilar to the facts here, ultimately the court allowed both Paskal and Dahlgren to testify about the results of that study. Thus, ABI is incorrect that the "trial court properly excluded plaintiff's expert evidence regarding Robert Friedman's exposure [to asbestos] as speculative and lacking in foundation" due to the dissimilarity of the score-and-snap study.

In addition, we disagree with ABI's assertion that a study involving asbestos release when scoring and snapping vinyl asbestos tile is "wholly irrelevant" to this case. It is true that a "court may inquire into, not only the type of material on which an expert relies, but also whether that material actually supports the expert's reasoning. 'A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.'" (*Sargon, supra*, 55 Cal.4th at p. 771.) Here, however, there is no such analytical gap. Although the method of cutting the tile in the study differed from the method Robert recounted in his testimony, this minor difference does not render the opinion inadmissible. ABI's disagreement with the applicability of the study went to the weight of the testimony about it, not its admissibility. (See *Cooper v. Takeda*

Pharmaceuticals America, Inc. (2015) 239 Cal.App.4th 555, 593 ["The flaws in the study methodologies were explored in detail through cross-examination and with the defense expert witnesses, and constituted evidence that went to the weight and not the admissibility of Dr. Smith's opinion testimony based on those studies. Those were matters for the jury to decide."].)

The trial court barred Dahlgren from offering an opinion as to whether the purported asbestos exposure from the tile installation in 1966 caused Robert's mesothelioma. We agree with plaintiffs that this was an abuse of discretion. Dahlgren had already testified that a single exposure to asbestos could be sufficient to cause mesothelioma, and the amount of exposure demonstrated in the score-and-snap study was sufficient to "put someone at risk of developing mesothelioma." Thus, the foundation for Dahlgren's ultimate causation opinion had already been established. ABI did not challenge the underlying bases for Dahlgren's causation opinion, other than disagreeing about the applicability of the score-and-snap study in light of the circumstances of this case. Thus, barring Dahlgren's ultimate causation opinion as lacking in foundation was error.

DISPOSITION

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion. Plaintiffs are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.